

**NICK STUTTERHEIM**)  
Claimant )  
VS. )  
) Docket No. 199,732  
**BOHL CONSTRUCTION**)  
Respondent )  
AND )  
)  
**FIREMAN’S FUND INSURANCE COMPANY**)  
Insurance Carrier )

- (1) Respondent contends claimant's accidental injury on November 28, 1995, did not arise out of and in the course of his employment with respondent.
- (2) Respondent contends the injury of November 28, 1995, was not a natural and probable consequence of the original work-related injury of December 5, 1994.
- (3) In its brief to the Appeals Board claimant raised the issue of whether the Administrative Law Judge erred in only awarding temporary total disability benefits from October 1, 1996, forward, rather than ordering the temporary total disability compensation from November 28, 1995, the date of disablement.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Order of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Order of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts the same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The Appeals Board finds the issue raised by claimant regarding entitlement to temporary total disability compensation is not an issue appealable pursuant to K.S.A. 44-534a or K.S.A. 44-551 as the Administrative Law Judge is clearly within his authority and jurisdiction to award temporary total disability benefits from a preliminary hearing. As such, claimant's appeal on that issue is dismissed.

With regard to the circumstances surrounding the injury of November 28, 1995, the medical evidence of Robert A. Rawcliffe, M.D., the court appointed IME doctor, is the most persuasive. While Dr. Rawcliffe's testimony at first examination appears somewhat confusing, he does clarify the fact that the leaf-raking incident in November 1995 was a natural and probable consequence of the original work-related automobile accident of December 5, 1994. The raking incident of November 1995, was not sufficient, in and of itself, to cause claimant any physical injury. It was only the existence of the previous back injury, from the work-related automobile accident, which allowed the raking incident to injure claimant to such an extent. As such, the Appeals Board finds that the Order of Administrative Law Judge Bruce E. Moore dated March 14, 1997, should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated March 14, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1997.

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BOARD MEMBER

c: David H. Farris, Wichita, KS  
Richard A. Boeckman, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director